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LAW & PATENT DEPARTMENT
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FEB 26 2004

OFFICE OF PETITIONS

In re Application of
Jozef Dechamps
Application No. 10/629,355
Filed: July 29, 2003
Attorney Docket No. XP-1107

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(b)

This is in response to the petition filed December 22, 2003 under 37 CFR 1.47(b).

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(b)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** Extensions of time may be obtained in accordance with 37 CFR 1.136(a).

The above-identified application was filed on July 29, 2003 without an executed oath or declaration.

Accordingly, on October 28, 2003, a "Notice To File Missing Parts of Nonprovisional Application" was mailed, requiring an executed oath or declaration and a surcharge for its late filing.

In response, on December 22, 2003, the present petition was filed.

A grantable petition under 37 CFR 1.47(b) requires:

- (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee;
- (4) a statement of the last known address of the non-signing inventor;
- (5) proof of proprietary interest, and
- (6) proof of irreparable damage.

The petition lacks items (1), (2), (5) and (6).

In regards to item (1), petitioner has not provided sufficient proof that a copy of the application (specification including claims, drawings, if any, and the Declaration) was

sent or given to the non-signing inventor or the inventor's attorney for review.¹ In this respect, it is noted that although the letter dated November 14, 2003, allegedly sent to Mr. Dechamps, references a Declaration and Power of Attorney and Assignment, the letter does not indicate that a copy of the application papers (specification, including claims, drawings, if any, and the Declaration), were ever sent to the non-signing inventor.

Petitioner should submit a copy of the cover letter transmitting the application papers to the non-signing inventor or details given in an affidavit or declaration of facts by a person with first-hand knowledge of the details.

Likewise, before a refusal can be alleged, petitioners must demonstrate that the non-signing inventor was sent or given a copy of the application papers. Petitioners must provide proof that the inventor refused to sign the declaration after being sent or given a copy of the application papers. If there is a written refusal, petitioners must provide a copy thereof with any renewed petition. If the refusal was made orally to a person, then that person must provide details of the refusal in an affidavit or declaration of facts.

As to item (2), an oath or declaration for the patent application in compliance with 37 CFR 1.63 and 1.64 has not been presented. The declaration under 37 CFR 1.63 and 1.64 does not set forth the citizenship, residence, and mailing address of the individual signing on behalf of AGFA-GEVAERT, the putative party having proprietary interest. Attention is directed to 37 CFR 1.63(a)(3); MPEP §§ 605.02, 605.03. An oath or declaration in compliance with 37 CFR 1.63 and 1.64 is required. Since Mr. Dechamps will purportedly not sign the declaration, the declaration may be signed on behalf of the inventor by an assignee. The oath or declaration must be signed by an officer of the corporation (president, vice president, secretary, or treasurer) on behalf of and as agent for the non-signing inventor(s). The officer must identify his/her title in the declaration, as well as his/her mailing address, residence, if the applicant lives at a different location from where he or she customarily receives mail, as well as the citizenship of individual signing on behalf of the non-signing inventor. If the oath or declaration is not signed by an officer of the corporation, then proof of authority of the person signing on behalf of the corporation must be submitted.²

In regards to item (5), petitioners have not established that the Rule 1.47(b) applicant has sufficient proprietary interest in the subject matter to justify filing the application under 37 CFR 1.47(b).³ Petitioners should submit a copy of an executed assignment agreement showing that the invention disclosed in the application is assigned to the Rule 1.47(b) applicant, or a legal memorandum signed by an attorney familiar with the law of the jurisdiction stating that a court of competent jurisdiction would by the weight of authority in that jurisdiction, award the title of the invention to the Rule 1.47(b) applicant.

In regards to item (6), petitioner must provide proof of irreparable damages in accordance with MPEP 409.03(g).

Finally, it should also be noted that portions of some of the documents have not provided an English translation and statement of the accuracy thereof. Petitioners should note that any non-English documents filed in the U.S. Patent and Trademark Office must be accompanied by an English translation thereof as well as a statement

¹MPEP 409.03 (d) .

²MPEP 409.03 (b) .

³MPEP 409.03 (f) .

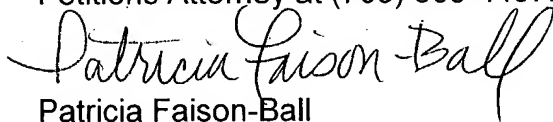
that the translation is accurate.⁴

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (703) 872-9306

Telephone inquiries concerning this matter may be directed to the undersigned
Petitions Attorney at (703) 305-4497.

A handwritten signature in cursive script that reads "Patricia Faison-Ball". The signature is written in dark ink and is positioned above the printed name and title.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

⁴37 CFR 1.52(d), see MPEP 608.01.